

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER WILLIAMS,

Plaintiff,

v.

Case No. 06-10909

WARDEN, FCI VICTORVILLE,

HONORABLE AVERN COHN

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS
AND
DIRECTING PLAINTIFF TO FILE AN AMENDED COMPLAINT
WITHIN TEN (10) DAYS**

I.

This is a missing property case. Plaintiff, currently an inmate at FCI Milan and proceeding pro se, is suing defendant, the Warden at FCI Victorville, claiming that during a transfer from FCI Victorville some of his personal items went missing. Plaintiff is seeking damages for the lost property in the amount of \$391.95. Plaintiff filed an administrative claim which was denied.

Before the Court is defendant's motion to dismiss on the grounds that plaintiff's complaint fails to state a jurisdictional basis and on the grounds that plaintiff has named an improper defendant. Plaintiff filed a response in which he says that his claim is based on the Federal Tort Claims Act and requests an opportunity to amend the complaint to name the United States as the proper defendant.

II.

Although plaintiff did not cite the Federal Tort Claims Act as the basis for jurisdiction, attached to the complaint was a letter from the government denying his administrative claim which specifically refers to the Federal Tort Claims Act. Pro se complaints are to be liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972). Thus, it can be fairly said that the complaint contained a jurisdictional basis. As such, defendant's motion to dismiss on this ground is not well-taken. As to dismissal for not naming the proper defendant, the government is correct that a claim under the Federal Tort Claims Act must be brought against the United States, not an individual. However, plaintiff may easily cure this deficiency by filing an amended complaint, as he requests. Defendant will suffer no prejudice in permitting the amendment, especially because the case is in its early stages.

Accordingly, defendant's motion to dismiss is DENIED. Plaintiff shall file an amended complaint, containing a statement of jurisdiction under the Federal Tort Claims Act and naming the government as a defendant, within ten (10) days.

SO ORDERED.

Dated: July 11, 2006

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to counsel of record and Roger Williams, 53960060, Federal Correctional Facility-Milan, P. O. Box 1000 Milan, MI 48160-1090 on this date, July 11, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160